

FINAL STATEMENT OF REASONS

PRISONER PRESENTATION OF DOCUMENTS (RN 01-09)

UPDATE TO THE INITIAL STATEMENT OF REASONS

The Board has made changes to the initially proposed regulatory text pursuant to public input received during the comment periods, as detailed below.

Section 2030—grammatical modifications were implemented—“Chairman” was changed to the non-gender specific “Chairperson”; subsection (c) was modified to clarify that persons “other than the prosecutor” would not be subject to submitting documents (which bear on the prisoner’s suitability for parole) within 10 days of the hearing. The Board has deleted unnecessary language stating that “[t]he prisoner’s attorney shall be notified that a prosecutor will attend [a parole hearing],” since there is no statutory language that mandates this function. Further, the regulatory language provides notice that the prosecutor may attend, and the attorney should therefore be prepared for the prosecutor’s attendance at all hearings.

The Board has elected to impose additional modifications—to reinstate the original regulatory language (at subsection (c)) in reference to the functions of the Classification and Parole Representative (C&PR). This amendment will more generally refer to “department staff” which is consistent with other related regulatory language. The Board has concluded that it would be more efficient to allow the California Department of Corrections (CDC) to delegate specific functions to its staff; for the Board to regulate such duties would not be feasible, since the employees are under the authority of the Director of Corrections.

Section 2247—In response to comments from the public, the Board has reinstated the prisoner’s request to review documents in the central file to “10 days” (instead of the proposed 30 days) prior to the week of the hearing. Further amendments to this section incorporate language to clarify that any documents authored by a judge, victim, witness or other person (which bear on the question of a prisoner’s suitability for parole) are not subject to any time constraints, “unless the documents contain new information which if presented would cause undue prejudice to the prisoner.”

Section 2249—Comments related to this section imply that the panel may decline to consider documents authored by the prisoner or his representative (attorney); further comments suggest that clear language is needed to indicate that support letters offering housing or employment should not be subject to any time constraints. Amendments to this section will clarify that “documents authored by the prisoner or his representative” shall be submitted to department staff not later than 10 days before the hearing. The failure to submit the documentation within this time frame *may* result in the exclusion of the information at the hearing. Additional language has been added to clarify that “release planning and employment offers” are considered documents that bear on the question of a

prisoner's suitability for parole, and therefore, will not be subject to the time constraints imposed in this section.

Section 2270—The Board has incorporated CCR § 2270 into this regulatory action to amend existing language stating that the prisoner shall be given notice of a subsequent parole hearing “no later than 7 days before the hearing.” The Board has determined that this time limit conflicts with time frames concerning upcoming parole hearings. Thus, the Board has amended this section to state that notice of the hearing shall be given “as soon as possible, but no later than 30 days before the hearing.” Minor grammatical changes have been made to maintain consistency in style and format.

LOCAL MANDATES

The Board of Prison Terms (Board) has determined that the proposed action will have no significant impact on local agencies or school districts.

CONSIDERATION OF ALTERNATIVES

The Board has determined that no reasonable alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments will not affect small businesses because they apply only to inmates and parolees of California penal institutions.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Board has determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

FEDERAL FUNDING TO STATE

The Board has determined that the proposed amendments will have no cost or savings in federal funding to the state.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL PUBLIC COMMENT PERIOD

COMMENTS NO. 1: Rowan K. Klein, Attorney at Law

Comments: Commenter contends that: a) proposed amendments to CCR section (§) 2249 are ambiguous in that it is implied that documents bearing on parole suitability

authored by the prisoner or his attorney may not be considered by the panel; b) the amendment to CCR § 2247 is ambiguous in that it could be read to mean that the prosecutor may submit new information in writing at the hearing (i.e., evidence as opposed to an opinion) which is inconsistent with earlier correspondence; and c) that there should be at least a 10-day advance notice to the prisoner or his attorney if any document has been submitted by any person, including judges or witnesses, that bears on the prisoner's suitability, so that there is an opportunity to respond.

Response: 1(a) This language has been amended to clearly indicate that "documents authored by the prisoner or his representative" shall be submitted no later than 10 days before to the hearing. This 10-day time limit is consistent with CCR § 2030(c) which states that the *prosecutor* must submit relevant documentation 10 days prior to the hearing. This rule is necessary so that copies of documents submitted by the prosecutor and prisoner/prisoner's attorney can be timely forwarded to the other, prior to the hearing, and to allow sufficient time for the hearing panel to review the documentation prior to the hearing. This time constraint will not preclude the prisoner or his attorney from submitting documents not authored by the prisoner or attorney that bear on the question of a prisoner's suitability for parole.

Accommodation: Partial

1(b) CCR § 2247 specifies that "a judge, witness or other person . . ." may submit documentation bearing on the prisoner's suitability; CCR § 2030 sets out the prosecutor's role in parole consideration hearings. Thus, it would not be appropriate to place this language in § 2030, as suggested.

Accommodation: None

1(c) CCR § 2247 has been amended to indicate that any new information submitted which bears on the question of the prisoner's suitability for parole *that would cause undue prejudice to the prisoner* would not be permitted for consideration. If the information submitted is determined to cause undue prejudice, the hearing would be postponed to allow the prisoner or attorney sufficient time to respond. Further, adopting the commenter's suggestion would unnecessarily delay hearings, even when information received is beneficial to the prisoner.

Accommodation: Partial

COMMENTER NO. 2: David W. Finney, #B-62624

Comments: Commenter contends that: (a) the Board has failed to comport with notice requirements in accordance with Government Code section 11346.4(1)(1) and (a)(4) which prevented commenter from researching and producing an adequate response to the related issues; (b) that proposed regulatory changes to CCR §§ 2030, 2247 and 2249 regarding the waiver of time constraints for "other persons" does not comport with the standards of necessity and consistency, i.e, it is unnecessary to waive time constraints for other persons that bear on the question of a prisoner's suitability for parole because they

are given advance notice of the parole consideration hearing(s) and can easily prepare for the hearing in a timely manner; and (c) to increase the advance notice a prisoner has to request a file review by 30 days, from the current 10 days, limits the prisoner's and his or her attorney's opportunity and ability to review the file just prior to the hearing.

Responses: 2(a) The Board adheres to Government Code section 11346.4 by mailing a copy of the notice of a regulatory action to every person who has filed a request for notice with the Board. Unless a notice is returned by the United States Postal Service for an unknown address, etc., there is no way for the Board to know whether each addressee in fact received notice of a regulatory change. Notification (of the regulatory changes) is provided to the Office of Administrative Law for publication and is also placed on the Board's website. As stated in Evidence Code section 641, "A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail." If the Board is made aware that a party has not received notice of a regulatory change due to some unforeseen circumstance, and requests that a later response be accepted, the Board will make every effort to comply with that request. In this instance, the late comment was accepted.

Accommodation: None

2(b) This proposed amendment, to waive time constraints for other persons that bear on the question of a prisoner's suitability for parole, is to the benefit of the prisoner, to provide fairness to parties opposing parole and to ensure that the information is provided to the hearing panel since it is a major factor in determining parole suitability.

Accommodation: None

2(c) CCR § 2247 has been amended to allow for the prisoner's original 10-day (from the proposed 30-day) review of documents in the central file before the week of the hearing.

Accommodation: Yes

COMMENTER NO. 3: Dawn Whitney, Staff Counsel, Dept. of Corrections

Comments: 3(a) Commenter contends that proposed changes to CCR § 2247 place responsibility on prisoners to request review of nonconfidential documents in their files at least 30 days, rather than 10 days as previously stated, before the week of the hearing. This change requires the central file review to be conducted within 90 days of the hearing, thus shortening the timeframe for the counselors to conduct the review, possibly raising workload issues.

3(b) Commenter contends further that language in the Initial Statement of Reasons (regarding proposed § 2030) contradicts the actual proposed language, limiting the persons required to submit documents 10 days before the hearing to three "critical participants" (prisoner, prisoner's representative, and the prosecutor); the proposed

language requires all participants to submit “any information not already available in the central file” 10 days before the hearing.

Response: 3(a) Please refer the response to 2(c) above whereby the Board has amended CCR § 2247 to defer to the original 10-day time frame within which the prisoner shall review nonconfidential documents in the department central file.

Accommodation: Yes

3(b) CCR §§ 2030 and 2249 have been amended to clarify that the prisoner, prisoner’s attorney, and the prosecutor are required to submit documents containing new information at least 10 days before the parole hearing. Documents authored by persons other than the prosecutor, prisoner, or prisoner’s attorney, which bear on the prisoner’s suitability for parole, are *not* subject to the 10-day rule requirement.

Accommodation: Yes

COMMENTER NO. 4: Cheryl Montgomery, Attorney at Law

Comments: Commenter contends that the proposed changes are contrary to statutory law and disregard the due process rights of prisoners, as follows: a) In reference to CCR § 2249, the use of the term “may” is “ripe for abuse” as it pertains to the Board excluding documents not submitted in a timely manner; hearing panel members could interpret this to mean that everything BUT letters in opposition would be subject to this time constraint, eliminating crucial information relating to parole plans. b) Proposed changes to CCR § 2247, which would allow the prisoner to review his central file at least 30 days before the hearing, would prevent the prisoner from responding to additional documents arriving after that time. The commenter cites *In Re Prewitt* which states that an inmate should be provided with a copy of any document submitted and afforded a reasonable opportunity to respond thereto, either in person or in writing.

Response: 4(a) CCR § 2249 has been amended to include “release planning and employment offers” as documents that “bear on the question of a prisoner’s suitability” and will therefore *not* be subject to the 10-day time constraint. As stated in the response to 1(c) above, any information submitted that bears on the questions of the prisoner’s suitability for parole *which would cause undue prejudice to the prisoner* would not be permitted for consideration. In addition, the prisoner or his attorney will be afforded a reasonable opportunity to respond verbally, at the hearing, regarding any documents that arrive less than 10 days prior to the hearing.

Accommodation: Yes

4(b) Please refer to the responses to 2(c) and 3(a) above.

Accommodation: Yes

THERE WERE NO COMMENTS RECEIVED DURING THE SECOND PUBLIC COMMENT PERIOD WHICH BEGAN ON MAY 31, 2002 AND ENDED ON JULY 3, 2002

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE THIRD PUBLIC COMMENT PERIOD WHICH BEGAN ON AUGUST 27 AND ENDED ON SEPTEMBER 30, 2002

Commenter: Jeff G. Pudoff, California Correctional Peace Officers Association

Comments: Commenter states that the language in § 2030(c) is not completely accurate in that not all institutions have a C&PR (Classification and Parole Representative) on their staff; instead, the institution may have a Correctional Counselor III (CCIII). Therefore, the proposed regulatory language would be more accurate if it read “C&PR/CCIII.” In addition, commenter states that in regard to CCR § 2049, the term “department staff” is too broad and may increase the workload for specific Correctional Counselors. Commenter also noted that language in CCR § 2049 should more accurately refer to “his/her,” instead of the current reference to “his.”

Response: The above comments were received via facsimile on September 27, 2002, which was within the Board’s third public comment period, held between August 27 and September 30, 2002. The comments were related to amendments proposed during the initial and second public comment period. Government Code section 11346.8(c) provides, in pertinent part, that “[a]ny written comments received regarding the [latest] change must be responded to in the final statement of reasons required by Section 11346.9.” Since Mr. Pudoff’s comments were not in reference to the *latest* changes, they do not fall within the requirement of Government Code section 11346.8(c), and, thus, the Board declines any substantive response to Mr. Pudoff’s comments.